

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

September 12, 2008

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST TO AMEND PRIOR BOARD ACTION OF
FEBRUARY 22, 2008 UNDER ITEM C-3: "REQUEST TO
AMEND PRIOR BOARD ACTIONS OF MAY 14, 2004 UNDER
ITEM D-7 AND JANUARY 14, 2005 UNDER ITEM D-23, SALE
OF LAND LICENSE AT PUBLIC AUCTION FOR REMOVAL
OF SAND FROM KAWAIELE WILD BIRD SANCTUARY,
COVERED BY EXECUTIVE ORDER NO. 3685 KAWAIELE,
MANA, WAIMEA, KAUAI, TAX MAP KEY: (4) 1-2-002:
PORTION 001."

BACKGROUND:

On May 14, 2004, under item D-7 (Exhibit A), the Board approved as amended the sale of a Land License at Public Auction for removal of sand at Kawaiele Bird Sanctuary, covered by Executive Order (EO) No. 3685.

On January 14, 2005, under item D-3 (Exhibit B), the Board approved as amended, changes to pricing of the proposed Land License. The "Minimum Upset Royalty" section was deleted and 3 sections were added: (1) a "Minimum Upset Annual License Fee", (2) a "Royalty Rate", and (3) an "Effective Royalty", which was the amount to be paid to the State by the successful bidder, being the higher of the annual License Fee or the Royalty Rate applied to the amount of sand removed, whichever was higher.

On February 22, 2008, under Item C-3 (Exhibit C), the Board approved as submitted amendments to the proposed sand Land License process to address changes in set-aside and name status of the subject lands. In cooperation with the Division of Forestry and Wildlife, the Land Division processed cancellation of EOs No. 4207 and No. 4208 for the Kawaiele Wild Bird Sanctuary. Mana Plains Forest Reserve was subsequently established by EO No. 4209, incorporating lands from the two cancellations as well as additional adjacent lands.

Hence, the sand Land License process now applied to Mana Plains Forest Reserve, rather than the Kawaiele Wild Bird Sanctuary. There was an additional amendment to the "License Term" section to read: One (1) year with an option to renew for a further one (1) year. All other terms and conditions listed in the January 15, 2005 approval of item D-3 remained the same.

DISCUSSION:

Board agenda item D-3 on January 14, 2005 incorporated changes to the pricing structure for Land License auction. After further consultation with the Department of the Attorney General, staff would like to simplify the License auction process by deleting the "Minimum Upset Annual License Fee" and the "Royalty Rate" and adding a "Minimum Upset Royalty Rate", which would be the starting price to be bid upon per cubic yard of sand to be removed. This "Minimum Upset Royalty Rate" was determined to be \$39.41 by staff analysis (Exhibit D) and was subject to the Chairperson's approval. The "Effective Royalty Rate" will then be the successful bid at auction on the royalty rate applied to the amount of sand removed. The Department would also like to impose a condition requiring the lessee to remove a minimum amount of sand to ensure that the licensee actively pursues removal of sand under the license.

Staff would also like to include in the auction terms a requirement that the successful bidder deposit \$20,000 or 2% of the value of the Effective Royalty Rate, whichever is less. The Effective Royalty Rate, for purposes of this deposit, shall be determined based on the winning royalty rate bid and the maximum amount of sand that may be removed under the license. This deposit shall be due to the Department within 24 hours of the close of bidding, otherwise the License will be offered to next highest bidder. The amount due the Department each month shall be deducted from the deposit until the deposit is depleted, after which monthly payments to the Department will commence. This deposit is not intended to take the place of a performance bond, which will also be required.

The prior submittals also indicated a single Land License to be bid upon. Since the property contains two separate parcels that sand will be removed from (Exhibit E), Kaua'i District staff would like to auction two Land Licenses, in order to provide opportunity for more than one successful bidder in the community.

RECOMMENDATIONS:

That the Board:

1. Delete the "Minimum Upset Annual License Fee" and the "Royalty Rate" described in its action of February 22, 2008, Item C-3.
2. Approve the "Minimum Upset Royalty Rate" of \$39.41 per cubic foot of sand.
3. Amend the "Effective Royalty Rate" section to read: "The successful bid at public auction applied to the amount removed."

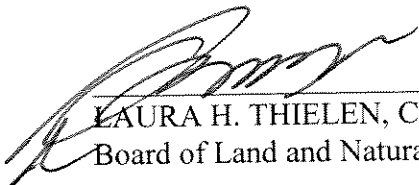
4. Include a provision allowing the Department to impose a minimum amount of sand that must be removed by the licensee.
5. Include a provision requiring the successful bidder to place a deposit with the Department within 24 hours of the close of the bidding as described above.
6. Approve the sale of two Land Licenses at auction, one for Parcel 4 and one for Parcel 5, as shown in Exhibit E.
7. All other terms and conditions listed in its February 22, 2008, Item C-3 to remain the same.

Respectfully submitted,



PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:


LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

Attachments